

AMENDED IN ASSEMBLY APRIL 11, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 941

Introduced by Assembly Member Torrico

February 22, 2007

An act to ~~add Section 50308.5 to the Financial~~ *amend Section 10240 of the Business and Professions Code*, relating to lending.

LEGISLATIVE COUNSEL'S DIGEST

AB 941, as amended, Torrico. ~~Adjustable rate mortgage advertisements. Real property loans: written statement to borrower.~~

~~Existing law, the California Residential Mortgage Lending Act, provides for the licensure and regulation by the Commissioner of Corporations of persons engaged in the business of making residential mortgage loans or servicing those loans. Existing law provides that if any person engaged in the business of making or servicing those loans refers in any advertising to rates of interest, charges, or costs of loans, the commissioner shall require that they are stated fully and clearly in a manner that the commissioner deems necessary to give adequate information to prospective borrowers. A willful violation of the California Residential Mortgage Lending Act is a crime.~~

~~This bill would require a person engaged in the business of making or servicing residential mortgage loans who advertises option adjustable rate mortgage loans and references a payment rate with a negative amortization feature to include a specified disclosure in the advertisements.~~

~~Existing law, the Real Estate Law, requires a real estate broker, who negotiates a loan to be secured by a lien on real property, to deliver to the borrower a statement in writing containing specified information~~

relating to the loan transaction. A willful violation of the Real Estate Law is a crime.

This bill would require a real estate broker to provide a borrower the option to receive a copy of this statement in an electronic format.

Because a willful violation of the bill's requirements would be a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 10240 of the Business and Professions
2 Code is amended to read:

3 10240. (a) Every real estate broker, upon acting within the
4 meaning of subdivision (d) of Section 10131, who negotiates a
5 loan to be secured directly or collaterally by a lien on real property
6 shall, within three business days after receipt of a completed written
7 loan application or before the borrower becomes obligated on the
8 note, whichever is earlier, cause to be delivered to the borrower a
9 statement in writing, containing all the information required by
10 Section 10241. It shall be personally signed by the borrower and
11 by the real estate broker negotiating the loan or by a real estate
12 licensee acting for the broker in negotiating the loan. When so
13 executed, an exact copy thereof shall be delivered to the borrower
14 at the time of its execution. The real estate broker negotiating the
15 loan shall retain on file for a period of three years a true and correct
16 copy of the statement as signed by the borrower.

17 No real estate licensee shall permit the statement to be signed
18 by a borrower if any information required by Section 10241 is
19 omitted.

20 (b) For the purposes of applying the provisions of this article,
21 a real estate broker is acting within the meaning of subdivision (d)
22 of Section 10131 if he or she solicits borrowers, or causes
23 borrowers to be solicited, through express or implied
24 representations that the broker will act as an agent in arranging a

1 loan, but in fact makes the loan to the borrower from funds
2 belonging to the broker.

3 (c) In a federally regulated residential mortgage loan transaction
4 in which the principal loan amount exceeds the principal loan
5 levels set forth in Section 10245, a real estate broker satisfies the
6 requirements of this section if the borrower receives (1) a “good
7 faith estimate” that satisfies the requirements of the Real Estate
8 Settlement Procedures Act of 1974 (12 U.S.C.A. 2601 et seq.),
9 and that sets forth the broker’s real estate license number and a
10 clear and conspicuous statement on the face of the document stating
11 that the “good faith estimate” does not constitute a loan
12 commitment, (2) all applicable disclosures required by the Truth
13 in Lending Act (15 U.S.C.A. 1601 et seq.), and (3) if the loan
14 contains a balloon payment provision, the disclosure described in
15 subdivision (h) of Section 10241, the balloon disclosure required
16 for that loan by Fannie Mae or Freddie Mac, or an alternative
17 disclosure determined by the commissioner to satisfy the
18 requirements of the Truth in Lending Act.

19 Prior to becoming obligated on the loan the borrower shall
20 acknowledge, in writing, receipt of the “good faith estimate” and
21 all applicable disclosures required by the Truth in Lending Act.
22 The real estate broker shall retain on file for a period of three years
23 a true and correct copy of the signed acknowledgment and a true
24 and correct copy of the “good faith estimate” and all applicable
25 disclosures required by the Truth in Lending Act as acknowledged
26 by the borrower.

27 (d) *A real estate broker shall give a borrower the option to*
28 *receive a copy of the statement required by this section in*
29 *electronic format.*

30 ~~SECTION 1. Section 50308.5 is added to the Financial Code,~~
31 ~~to read:~~

32 ~~50308.5.—(a) If a person engaged in the business regulated by~~
33 ~~this division advertises option adjustable rate mortgage loans and~~
34 ~~references a payment rate with a negative amortization feature,~~
35 ~~those advertisements, whether written or broadcast through radio,~~
36 ~~television, or computer, shall include the following disclosure:~~

37 ~~“This advertised rate of _____ is not the actual interest rate. It is~~
38 ~~the payment rate. If the borrower chooses to pay this advertised~~
39 ~~rate, the principal balance of the loan will increase.”~~

1 ~~(b) The disclosure specified in subdivision (a) shall be in a font~~
2 ~~no smaller than the prevailing font in the printed advertisement.~~
3 ~~If the advertisement includes a monthly payment based on the~~
4 ~~payment rate, the disclosure may be in the same font as the~~
5 ~~advertised monthly payment as long as the font is not smaller than~~
6 ~~the prevailing font in the printed advertisement. In the case of~~
7 ~~audible advertisements, the disclosure shall be read before the end~~
8 ~~of the advertisement.~~

9 SEC. 2. No reimbursement is required by this act pursuant to
10 Section 6 of Article XIII B of the California Constitution because
11 the only costs that may be incurred by a local agency or school
12 district will be incurred because this act creates a new crime or
13 infraction, eliminates a crime or infraction, or changes the penalty
14 for a crime or infraction, within the meaning of Section 17556 of
15 the Government Code, or changes the definition of a crime within
16 the meaning of Section 6 of Article XIII B of the California
17 Constitution.